

REMARKS

This responds to the Office Action dated August 21, 2006, and the references cited therewith.

Claims 1, 11, and 13 are amended, and claim 12 is canceled; as a result, claims 1-11 and 13-33 are now pending in this application.

§102 Rejection of the Claims Using Heynen

Claims 1-3 and 6-10 were rejected under 35 U.S.C. § 102(e) as being anticipated by Heynen et al. (U.S. Patent No. 6,507,756, hereinafter “Heynen”).

Claim 1

Claim 1 has been amended to more clearly describe the recited subject matter. Insofar as the rejection is applied to claim 1, Applicant respectfully traverses the rejection and submits that Heynen does not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Heynen, among other things, a teaching or suggestion of a pulse generator that includes a selectable pacing mode adapted to provide therapeutic electrical stimulation pre-exciting at least a portion of the cardiac tissue administered with exogenous cells in a cell therapy, as recited in claim 1.

The Office Action asserts that “the step of ‘pre-exciting’ is considered to be intended use”. However, claim 1 recites a pulse generator that includes a selectable pacing mode, and the “pre-exciting” is part of the description of that selectable pacing mode. Thus, the “pre-exciting” is not to limit the recited matter by an intended use.

The Office Action asserts that the “device of Heynen is considered to be able to pre-excite any type of tissue.” However, the Office Action does not assert, and Applicant is unable to find in Heynen, that the device of Heynen includes the selectable pacing mode recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claim 2, 3, and 6-10

Applicant respectfully traverses the rejection. Claims 2, 3, and 6-10 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2, 3, and 6-10.

Applicant respectfully requests reconsideration and allowance of claims 2, 3, and 6-10.

§102 Rejection of the Claims Using Chachques

Claims 11, 12 and 16-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chachques (U.S. Patent Application Pub. No. 2002/0124855, hereinafter “Chachques”).

Claim 11

Claim 11 has been amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 11, Applicant respectfully traverses the rejection and submits that Chachques does not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Chachques, among other things, a teaching or suggestion of programming a pacing mode including specialized cell therapy pacing cycles, as recited in claim 11.

Applicant respectfully requests reconsideration and allowance of claim 11.

Claim 12 and 16-24

Applicant respectfully traverses the rejection. Claims 12 and 16-24 are dependent on claim 11, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 11 is incorporated herein to support the patentability of claims 12 and 16-24.

Applicant respectfully requests reconsideration and allowance of claims 12 and 16-24.

§103 Rejection of the Claims Using Heynen and Bonnet

Claims 4 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Heynen in view of Bonnet (U.S. Patent No. 6,574,507, hereinafter “Bonnet”).

Claims 4 and 5

Applicant respectfully traverses the rejection. Claims 4 and 5 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 4 and 5.

Applicant respectfully requests reconsideration and allowance of claims 4 and 5.

§103 Rejection of the Claims Using Chachques and Heynen

Claims 1-2, 3 and 6-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chachques in view of Heynen.

Claim 1

Claim 1 has been amended to more clearly describe the recited subject matter. Insofar as the rejection is applied to claim 1, Applicant respectfully traverses the rejection and submits that Chachques and Heynen, each alone or in combination, do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Chachques and Heynen, individually or in combination, among other things, a teaching or suggestion of a pulse generator that includes a selectable pacing mode adapted to provide therapeutic electrical stimulation pre-exciting at least a portion of the cardiac tissue administered with exogenous cells in a cell therapy, as recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claim 2, 3, and 6-10

Applicant respectfully traverses the rejection. Claims 2, 3, and 6-10 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2, 3, and 6-10.

Applicant respectfully requests reconsideration and allowance of claims 2, 3, and 6-10.

Claim 11

Claim 11 has been amended to more clearly describe the recited subject matter. Insofar as the rejection is applied to claim 11, Applicant respectfully traverses the rejection and submits that Chachques and Heynen, each alone or in combination, do not provide the recited subject matter. For example, Applicant is unable to find in the cited portions of Chachques and Heynen, individually or in combination, among other things, a teaching or suggestion of programming a pacing mode including specialized cell therapy pacing cycles, as recited in claim 11.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claim 12-24

Applicant respectfully traverses the rejection. Claims 12-24 are dependent on claim 11, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 11 is incorporated herein to support the patentability of claims 12-24.

Applicant respectfully requests reconsideration and allowance of claims 12-24.

§103 Rejection of the Claims Using Chachques, Heynen, and Bonnet

Claims 4 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chachques in view of Heynen and further in view of Bonnet.

Claims 4 and 5

Applicant respectfully traverses the rejection. Claims 4 and 5 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 4 and 5.

Applicant respectfully requests reconsideration and allowance of claims 4 and 5.

Reservation of the Right to Swear Behind References

Applicant reserves its right to swear behind any references which are cited in a rejection under 35 U.S.C. §§102(e) and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6965 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

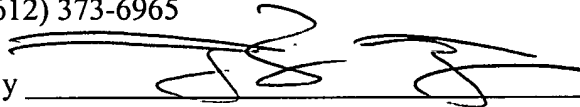
Respectfully submitted,

STEVEN D. GIROUARD ET AL.

By their Representatives,

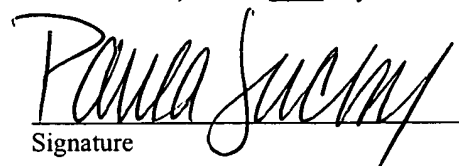
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 21 day of November, 2006.


Name


Signature